

# UNITED STATES DISTRICT COURT For The Eastern District of Virginia Alexandria

Division

Emmitt G. Prosser JR # 1422097

Pro, se Plaintiff

v

Civil Action # 1:20CV756

Harold Clarke ETAL Bench trial

David A Robinson

John Doe #1

Chyan Gilmore

Chute LT A Brown

Contrell

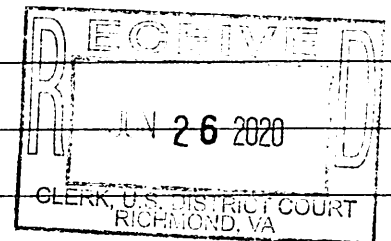
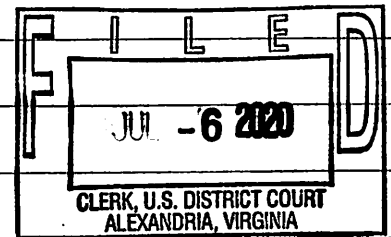
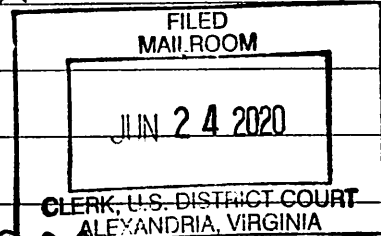
Smith

Sgt Meyster

C/O Colburn, Sgt T. Brown

Defendants

1



## Civil Complaint

① Comes Now Pro se Plaintiff Emmitt George Prosser JR A Prisoner

② Sussex One State Prison Under the Primary Care OF Defendants AS Named Above whom Are employees By Virginia Soc Director Harold Clarke. Plaintiff Brings this Action via 1983 Civil Complaint Pursuant to 42 U.S.C §1983 Plaintiff is seeking Compensatory Damages, Punitive Damages, declarative Relief, and declarative Relief Because Defendants Action and/or inaction when chloroform Gas locks were placed on every floor At Sussex One state Prison Subjecting Plaintiff to imminent danger From Fire and/or Physical, Medical injury and light that all the lock can Be removed off

they forced into an Emergency Situation. On 4-11-20 Plaintiff's wall Socket Malfunction and Began Spitting Fire and the Cell Caught On Fire Plaintiff Priscoe Pressed the cell Emergency Call Button But that did not work either, Because the Prison is Always Short OF STAFF there was no Correctional STAFF On the Floor to Come Put the Fire Out Plaintiff Priscoe and Asthmatic Prisoner Became Over taken By the ~~smoke~~ smoke and tried to throw the items into the cell out the Broken tray Slot But the smoke was so thick Plaintiff could only get some OF the items on Fire Out the cell Prisoner Wright A worker who One of Pop's former the Both Officer OF the large Amount OF smoke into the cell and Pop To no Avail Plaintiff and his cell Partner stayed in the cell approximately 25mins. Defendants are aware OF the danger that lies in the wake that all cells have Malfunction with the sockets that it would need to at least Be 3 to 4 Staff Members on the Floor to Get all 84 Prisoners out the cell in this case Plaintiff was not Removed From his cell in the next 2 Min. or ill Because there was not even one Correctional Officer to Remove one lock

### Jurisdiction

- ② This Court Has Jurisdiction Over Plaintiff Federal law claims Pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1345 (a) (3)

### venue

- ③ Venue is Proper Under 28 U.S.C. 1391 (B) (1) Because Defendants are Subject to the Personal Jurisdiction and Venue with Respect to this action Under 28 U.S.C. 1391 (B) (2)

## Parties

- ④ Plaintiff Emmitt G. Proctor JR #1422097 Hereafter Referred to as Plaintiff ~~and~~ or Plaintiff Proctor Plaintiff is a ~~Via~~ Prisoner @ Sussex One State Prison Serving a Sentence OF ~~Double~~ Life Plus 116 years ~~in~~ Prison and Plaintiff has a Right to Be Free From ~~Excessive~~ Cruel and Unusual Punishment and Unnecessary and/or infliction OF Pain a Right By the 8th Amendment OF the United States Constitution
- ~~Plaintiff's~~ ~~and~~ ~~statements~~  
OF Claims
- ⑤ Defendant Horley Clarke is the Director OF Virginia ~~and~~ is legally Responsible For Safe Custody and Care OF All Prisoners with ~~in~~ ~~Via~~ ~~including~~ Plaintiff Defendant Clarke is ~~Sworn~~ ~~in~~ Both his Official and ~~official~~ Capacity. Defendant Clarke's ~~action~~ to assure Safety OF Plaintiff and Some 700 Plus Prisoners Currently Being ~~officially~~ ~~Pay~~ ~~lower~~ ~~fears~~ ~~caused~~ him to Be liable ~~in~~ Both Capacities as it Relates to the Claims OF the 8th Amendment Violation.
- ⑥ Defendant David A Robinson is Chief OF Operations For the Virginia Dept OF Corrections and legally Responsible For assuring All Operations within ~~Via~~ Facilities assure the Safe Custody and Care OF All Prisoners housed within ~~Via~~ ~~including~~ Plaintiff Defendant Robinson ~~action~~ to assure that the use OF ~~officially~~ ~~Pay~~ ~~locks~~ ON Plaintiff ~~for~~ ~~if~~ ~~not~~ ~~cause~~ him to Be ~~in~~ ~~danger~~ ~~in~~ Face OF any Emergency. Defendant Robinson is ~~Sworn~~ ~~in~~ Both his Official and ~~official~~ Capacities.

⑦ Defendant John Joe #1 aka the local Fire Marshall For Culver  
 ly Virginia Responsible For Approving chryvifical Pay locks  
 Be Put on all cell floors including Plaintiff Cell knowing  
 Full well that the light OF any emergency For Medical  
 Physical Assault or worst A Fire that All the locks co  
 uld not Be removed From the floors to end the danger  
 that lies the wake OF Being Pay locked Behind  
 A Metal cell floor. Defendant Joe #1 is legally liable  
 For 8th Amendment Violation and He is Suffering both his  
 Official and chryvifical Capacities.

⑧ Defendant Cl Van Gillelore is a correctional Sergeant  
 @ Sussex One State Prison and is legally liable For  
 8th Amendment Violation when he Ordered chryvifical  
 Pay locks Be Placed on Plaintiff cell floor knowing Full  
 well He does not Employ the Proper amount OF Staff to  
 Remove the locks the Face OF any emergency Defendant  
 Gillelore is Suffering both his chryvifical and Official  
 Capacity

⑨ Defendant Currell LT A Brown is legally liable For  
 Following Orders to Place chryvifical Pay locks on  
 All cell floors knowing the Potential For Prisoners to Physically  
 hurt and or harm their cellmates without Protection From  
 Staff longer due to lack OF Staff and Pay lock  
 On the cell floor Defendant Brown is Suffering both  
 his Official and chryvifical Capacities

⑩ Defendant Cantrell is legally liable For 8th Amendment

Violation when she was deliberately indifferent to Plaintiff Serious Medical Need when she denied any or delayed Plaintiff Medical Attention AFTER Breathing in Smoke in the closed cell. Defendant contrived to sue for both her official and individual capacity.

⑪ Defendant Smith is legally liable for 8th Amendment Violation of deliberate indifference to Plaintiff Serious Medical Need when she denied any or delayed Plaintiff Adequate Medical Attention AFTER knowing he had been exposed to Smoke inhalation. Defendant Smith is suing for both her official and individual capacities.

⑫ Defendant Sgt Meyster is legally liable for 8th Amendment Violation by Failing to Remove Plaintiff and his Cell Mate from a Cell knowingly that he knew was on Fire and/or Full of Smoke. Defendant Meyster is also legally liable for 1st Amendment Violation of Retaliation. Defendant Meyster is suing for both his official and individual capacity.

13 Defendant Colburn is legally liable for 8th Amendment Violation when he Refuse to Remove Plaintiff and his Cell Mate from a Cell he knew had been on Fire and was Full of Smoke. Defendant Colburn also is liable for and ~~is~~ 1st Amendment Violation of Retaliation. Defendant Colburn is suing for both his official and individual capacities.

- (14) Defendant T. Brown is legally liable for following order to place and construct padlock on Plaintiff cell door. Defendant Brown is a Unit Manager of the unit Plaintiff is currently housed in and has full knowledge that her Building Chief did not have the staff to respond to emergency situation with or without lock on all the doors unless one. Defendant Brown is being sued both her official and individual capacity.

### Facts.

- (15) For almost two years Sussex One State Prison has been suffering apparent mechanical malfunctions with the cell doors where the both key pad would not secure some of the doors. Progressively the doors at Sussex One got worst while a large amount of the doors would not secure they would shut they just would not lock.
- (16) Staff then would instruct prisoners to pull their doors open instead of putting a work order in on the doors and prisoners then began to freely open their cell door and exit the cell.
- (17) It is a fact that multiple news channels did a story on the shortage of staff at Sussex One State Prison rendering the prison unsafe due a plethora of ways.
- (18) The doors being and closure occurred after the prison was found to have a major staff shortage.



- (19) On 2-20-20 Plaintiff Boscoe Along with Prisoner Hantzell Clarke were transferred From Bay Union State Prison to ~~Sussex~~ Sussex One State Prisoners Both were housed in cell 1 of 22. Cell 1 of 22 However ~~is~~ secure with the use of the 1 of control Booth.
- (20) The Reason For Prison Yards that are securable By Key Pads also so that Prison Guards have easy access to enter the cell in the Face of A Prisoner assaulting his cell mate, ~~medical~~ emergency or worst fear of all ~~and~~ that's Being on Fire
- (21) The cells are equiped with Emergency call Buttons However the call Buttons ~~do~~ Bullying ~~is~~ not work.
- (22) On 3-31-20 @ approximately 5:30am Multiple correctional staff entered 1 of 22 with 40 Plus locks to Put on the cell doors when the lock was placed on Plaintiff cell ~~for~~ any He was handed a Memo saying ~~that~~ locks were approved By ~~represent~~ ~~for~~ #1 and ~~represent~~ ~~call~~ before the Memo was handed out By ~~represent~~ Brown
- (23) When Plaintiff explained that he also a Chronic Care Prisoner and has asthma and other medical issues to ~~represent~~ ~~ant~~ Brown she said Press the emergency call Button and told her the Button ~~is~~ not work and she told ~~me~~ to Press the Emergency call Button to see if it worked and Pressed the Button she called the Booth and asked if the call Button light up and the Booth Officer said Over the walkie talkie the

- (24) emergency Call Buttons ~~that~~ work ~~also~~ <sup>are</sup> ~~of~~ <sup>in</sup> the cells ~~as~~ <sup>as</sup> Brown then Brown said we will Put a work order ~~also~~ <sup>in</sup> there will Be at least 3 correctional staff on the Floor at All times.
- (25) On 3-30-20 The Fire Marshall was Allegedly Scheduled to report to Sussex one to Review the manner ~~also~~ <sup>in</sup> which Potential Risk OF Fire ~~danger~~ <sup>exists</sup> ~~if~~ <sup>the</sup> ~~Pop~~ <sup>locks</sup> could Not Be removed ~~also~~ <sup>in</sup> the Face OF Any Emergency
- (26) Absolutely no Fire drills were conducted By staff the Fire Marshall Nor Prisoners ~~explained~~ <sup>instructed</sup> on how to effectively Respond to such ~~any~~ <sup>an</sup> emergency. to my knowledge the Fire Marshall never ~~if~~ <sup>came</sup> ~~reference~~ <sup>to</sup> Joe #1 is the ~~person~~ <sup>person</sup> Responsible For ensuring All living Structures are within Fire Safety Guidelines
- (27) The locks on the doors are Accessible to the whole Prison Population when they exit the cell ~~and~~ <sup>if</sup> staff ~~if~~ <sup>do</sup> not assure that the locks are not tampered with By Other Prisoners Outside the cells
- (28) On 4-11-20 Plaintiff Prosser was housed ~~also~~ <sup>in</sup> his assigned cell 1 of 22 Plaintiff was housed ~~also~~ <sup>in</sup> that cell with another Prisoner the lock was on the door Plaintiff like every morning began to heat a cup OF water to make some coffee Plaintiff used a stinger to heat his water ~~and~~ <sup>and</sup> the bucket began to spit out fire ~~and~~ <sup>and</sup> caught the cell on fire. Plaintiff pressed the call emergency Button ~~and~~ <sup>and</sup> it ~~if~~ <sup>did</sup>



- (29) Not worth Plaintiff Called Out to the Correctional Officer For help But there was not one Correctional Officer on the Floor Plaintiff Cell Began to Fill with Smoke and Plaintiff Attempted to throw some of the stuff out the cell that was catching a fire
- (30) Prisoner Wright Came to Plaintiff Boscoe Cell and Asked for our help he saw the Fire and Reported it at approximately 954 am to the Booth Officer whom relayed the Message over the walkie talkie Requesting Assistance For a Cell on Fire also Plaintiff
- (31) Defendants Meagan and Colburn Both entered the Cell Plaintiff Meagan Attempted to Remove the lock off the door and then Stated Someone Broke a Key in this lock and first Report came close to getting Plaintiff Boscoe and his cell out of the smoke filled cell with Bolt Cutters he Questioned Plaintiff About the Fire and told Plaintiff and his cell to Pack their Property Cause they were going to Segregation
- (32) Defendants Meagan and Colburn Both Relayed getting Plaintiff out the cell For at least 25 mins when they Arrived

Plaintiff was taken to Uxbridge By ~~Defendant~~ Colburn whom told Plaintiff we locking you up when Plaintiff asked why ~~Defendant~~ Colburn said cause you file lawsuit before receiving any Uxbridge attention Plaintiff was taken

(33) to Segregation By Orders of Defendant Contrell whom was called and Overheard on Speaker Phone tell Defendant Callburn if he stupid enough to start a fire He wont need Medical Attention

(34) Plaintiff Prosser while in Segregation began to suffer complication of Restrictive Breathing. Plaintiff was taken Back to Medical But was not evaluated and treated for Smoke Inhalation Defendant Smith in fact told Plaintiff "you shouldnt be able to Breathe that's what you get" and the structure Security to take Plaintiff Back to his Segregation Cell.

(35) Plaintiff Lungs Burned and Plaintiff struggled to Breathe. For days

As Promised Plaintiff Prosser Received the Retalitory Charge written By Defendant McFarlen and Plaintiff was later vindicated From the Bogus Retalitory Charge After a Hearing was conducted

### Exhaustion of Administrative Remedies

(36) Both issues according to VFC Policy Grievance Procedure are in fact now Grievable Because the locks were Approved By the local Fire Marshal which takes it out of the control of VFC. And Disciplinary Measures can not be justified through the Prison Grievance Procedure

## Relief Requested

- (37) Most importantly this Honorable Court should Order All locks on the Form of ~~classification~~ ~~Part~~ locks Be Removed From All the cell floors which Plaintiff Roscoe would Be subjected to Being housed on
- (38) Defendants should All Be Sanctioned Punitive Damages on the Amount of 2 Million Dollars Part on equal share
- (39) Defendants shall Pay equally Compensatory Damages on the Amount of \$50,000.00 For knowingly Subjecting Plaintiff Roscoe to Unsafe life living conditions on Violation of Plaintiff Roscoe 8th Amendment.
- (40) Defendants Colburn and Shall Pay the Equal Share of \$50,000.00 For their Retaliation of Plaintiff Right to access the Courts.

This Honorable Court shall enter declaratory Relief that the locks on the floors violate the 8th Amendment on a major way.

May 6 2020



BERENICE EDITH PONCE  
NOTARY PUBLIC  
Commonwealth of Virginia  
Registration #7680819  
My Commission Expires 8/31/2020

*Eel*

Verification of Complaint

I, Emmitt C. Roscoe Jr. do hereby swear under Penalties of Before Under Signature of *Emmitt C. Roscoe Jr.* that the Content of this Civil Complaint Filed this 6 day of May 2020 is true and correct to the Best of my knowledge and Record keeping.

*Emmitt C. Roscoe Jr.*  
Notary Signature

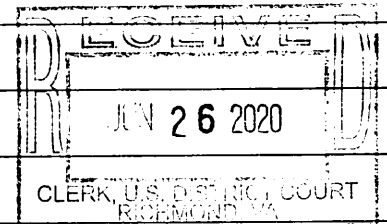
UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA

EMMETT G. ROSCOE pro se  
PLAINTIFF

V.

CASE NO. \_\_\_\_\_

HAROLD CLARKE et al ,  
DEFENDANTS



DECLARATION IN SUPPORT OF PLAINTIFF'S CIVIL  
ACTION 42 U.S.C. § 1983 COMPLAINT

SIDNEY P. MARTIN STATES UNDER PENALTY OF PERJURY:

1) I am housed at Sussex I State Prison  
and am a witness to the above titled action.

2) Sussex I State Prison has placed padlocks on  
all cell doors putting not only the plaintiff's health  
and safety at serious risk but every prisoner  
subjected to a padlock on their cell door.

3) Sussex I State Prison is short staff and  
cannot possibly keep enough extra staff in a pod/  
building for protecting prisoners in case of a fire.

4). Sussex 1 state prison doesn't prevent serious fire hazards by keeping pods and buildings free of potential fire hazards (e.g. in 3Bravo pod there is a dozen or so rolls of toilet paper along with magazines hanging on strings from the ceiling).

5). Sussex 1 state prison leaves faulty locks on doors to prevent doing paperwork such as incident reports for cutting off a faulty or ceased up lock.

6). The plaintiff, Mr. Porcoe has been confined to Restrictive housing cell 3B-11 because Defendants accused him of setting his cell on fire intentionally and I am housed in Restrictive housing with him and witnessed him being accused of this but the Defendants were not present to witness if he did it intentionally or if it happened from a faulty electrical socket.

7). Prisoners at Sussex 1 state prison are constantly subjected to faulty equipment in the cells such as but not limited to, electrical sockets, ineffective intercoms or sometimes no intercom at all, no lights and broken sinks or toilets.

8). Officers and prison officials at Sussex 1 state prison constantly make poor decisions resulting in them putting prisoners in dangerous situations or in situations that may cause injury and their way of covering it

is putting the blame on the prisoner as they have done with the plaintiff by stating he intentionally started the fire.

9) I have seen and experienced this same thing in other situations.

10) I currently am housed in Restrictive housing and I have no intercom period to report emergency's if one presented itself.

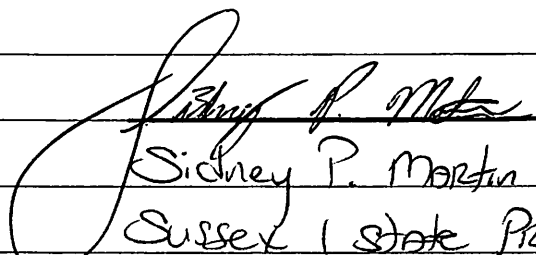
11) I make this Declaration to support plaintiff's complaint in this above styled action.

The Foregoing Declaration is made by Sidney P. Martin #1416216 and supports Plaintiff's complaint and I make this Declaration under my free will.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

6-11-2020

DATE

  
Sidney P. Martin #1416216  
Sussex I State Prison  
24414 Musselwhite Drive  
Waverly, VA 23891



Offender Copy



VIRGINIA DEPARTMENT OF CORRECTIONS

## Disciplinary Offense Report

861.1 A-1

Report generated by Colson, W A

Report run on 04/12/2020 at 12:41 PM

Case Number: SXI-2020-1389 Offender Name: Roscoe, Emmitt G DOC #: 1422097 Housing: HU3D-14  
 Facility: Sussex I State Prison Reference: \_\_\_\_\_  
 Offense Code: 111A Offense Title: Intentionally Destroying, Altering, Damaging, or Defacing...  
 Offense Date: 04/11/2020 Approximate Time: 10:11 AM Location: Cell - HU1-D

## DESCRIPTION OF THE OFFENSE

Provide a summary of the details of the offense (i.e.: who, what, when, where, and how; any unusual behavior, any physical evidence and its disposition, and any immediate action taken – including use of force, etc.)

On the above date and the approximate time of 10:11am, while i Sgt. Medie was about to open the lock on HU1-D-22, i noticed that the lock on the door had a metal substance stacked in it. Offenders Roscoe, E #1422097 and Clarke R. #1173831 were assigned to cell HU1-D-22. Upon further questioning of both offenders; Roscoe, E #1422097 and Clarke R. #1173831 to ascertain who was responsible for stacking the metal substance in the lock, both offenders were not cooperative. Every offender is responsible for their cells and intentionally destroying State property is a violation of OP 861.1 therefore this charge is written.

☐ Investigation

Date Completed: \_\_\_\_\_

☐ DESCRIPTION CONTINUED ON ATTACHED PAGE

Witnesses: \_\_\_\_\_

Reporting Officer: Medie, MTitle: SergeantDate: 04/11/2020Time: 8:16 PMOfficer -In-Charge: Colson, W ATitle: Lieutenant

OIC Signature: \_\_\_\_\_

Date: 04/12/2020Time: 12:38 PM

## ADVISEMENT OF RIGHTS

By signing below, you indicate your preference regarding the rights indicated. Failure to respond, or indicate a preference, constitutes a **WAIVER** of the first three rights. The following forms are available to the offender **UPON REQUEST** in each housing unit: *Witness Request Form*, *Documentary Evidence Request Form*, and the *Reporting Officer Response Form*. The offender must submit these request forms to the Hearings Officer within **48-HOURS** of the charge being served.

DO YOU REQUEST A STAFF OR OFFENDER ADVISOR TO ASSIST YOU AT THE HEARING?

☒ Yes ☐ No ☐ REFUSED TO RESPOND

DO YOU WISH TO REQUEST WITNESSES?

☒ Yes ☐ No ☐ REFUSED TO RESPOND

DO YOU WISH TO REQUEST DOCUMENTARY EVIDENCE?

☒ Yes ☐ No ☐ REFUSED TO RESPOND

DO YOU WISH TO WAIVE YOUR RIGHT TO 24-HOUR PREPARATION TIME PRIOR TO THE HEARING?

☐ Yes ☒ No ☐ REFUSED TO RESPOND

DO YOU WISH TO APPEAR AT THE DISCIPLINARY HEARING?

Refusal to appear is an admission of guilt, a waiver of witnesses and the right to a disciplinary hearing.

☒ Yes ☐ No ☐ REFUSED TO RESPOND

YOU HAVE THE RIGHT TO QUESTION REPORTING OFFICER

(In person for Category I Offenses; by submitting a Reporting Officer Response Form for Category II Offenses)

YOU HAVE THE RIGHT TO ENTER INTO A PENALTY OFFER.

YOU MAY REMAIN SILENT. Silence does NOT constitute an admission of guilt.

THE CHARGE MAY BE VACATED AND RE-SERVED AS A DIFFERENT OFFENSE, WHICH CAN BE A HIGHER, EQUIVALENT OR LESSER OFFENSE CODE.

YOU MAY BE FOUND GUILTY OF A LESSER-INCLUDED OFFENSE CODE, IN ACCORDANCE WITH OPERATING PROCEDURE 861.1

You have been informed of the charges against you, and advised of your rights at the Disciplinary Hearing.

Served and Witnessed By: A. Colson

Offender's Signature: \_\_\_\_\_

Print Name: A. Colson

Print Name: \_\_\_\_\_

Date of Service: 4-12-2020 Approximate Time: 1445IF OFFENDER REFUSES TO SIGN, SERVING OFFICER WILL CERTIFY REFUSAL: A. ColsonADVISOR AT SERVICE OF DOR: A. Colson

FORMS PROVIDED AT SERVICE (IF REQUESTED):

☒ Yes ☐ NoDate of Hearing: 04/22/2020

Revised Date: \_\_\_\_\_

Revised Date: \_\_\_\_\_

Revised Date: \_\_\_\_\_



**COMMONWEALTH OF VIRGINIA**  
**Department of Corrections**

**IVAN GILMORE**  
Warden

*Division of Institutions*  
*Eastern Region*

*Sussex I State Prison*

*24414 Musselwhite Drive*  
*Waverly, Virginia 23891-2222*  
*Phone: (804) 834-9967*  
*Fax: (804) 834-4084*

*To: Offender Population*

*From: Warden Ivan Gilmore*

*Subject: Sussex I Operational Plan*

Sussex I State Prison will be off lock April 1, 2020 and will be on Modified Movement due to COVID 19. Sussex I is placing padlocks on all cell doors for staff and offender safety. The padlock on the door are approved through the Fire Marshal. Offender will follow all rule and regulation. Offender will not have any covering on lights or objects hanging to block the view of staff. Cells are to be clean at all times and in compliance before they exit. Offenders will stand for count. In the event your cell is not in compliance, there will be no movement for out of cell time. Moving forward offender movement will be facilitated as follows:

1. **Mass Movement:** Six cell doors will be opened at a time. The offenders will step out of their cells and stand in front of their cells. The cell doors will be shut. The next six cells will be opened and the same process will take place until one full tier of offenders are out of their cells. The offenders will then be given instructions to move. Once those offenders are clear of the pod, the other tier of cells will be opened in the same manner. On even days, the lower tier will move first. On odd days, the upper tier will move first. Upon returning to the pod, the offenders will stand in front of their cells until the floor officer can open the cell door for the offenders to be placed back in their cells and then padlocked
2. **Programs/ Correctional Education/Vocations/Work call/ Medical/:** Individual cells will be opened according to the Master Pass List; Offenders will follow the same protocol as above when they exit their cells
3. **Visitation:** Individual cells will be opened as they are called for visits utilizing trip passes
4. **Death row, Protective Custody and Restrictive Housing** movement will remain the same per policy

*at post*